

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TERRY MCNEIL,	:	No. 3:15-CV-01243
	:	
Plaintiff,	:	(Judge Brann)
	:	
v.	:	(Magistrate Judge Saporito)
	:	
GLOBAL TEL-LINK, <i>et al.</i> ,	:	
	:	
Defendant.	:	

**ORDER**

**NOVEMBER 13, 2017**

Before the Court for disposition is a Report and Recommendation filed by Magistrate Judge Joseph F. Saporito, Jr.<sup>1</sup> In this Report, Magistrate Judge Saporito recommended that (1) the complaint (Doc. 1) be DISMISSED as frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), § 1915(e)(2)(B)(ii), § 1915A(b)(1), and 42 U.S.C. § 1997e(c)(1), and (2) the Clerk be directed to close this case.<sup>2</sup> Plaintiff has since filed numerous “motions” which this Court will loosely construe as objections.<sup>3</sup>

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<sup>1</sup> ECF No. 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244 (3d Cir. 2013)(recognizing that courts must be flexible when construing *pro se* pleadings).

Upon designation, a magistrate judge may “conduct hearings, including evidentiary hearings, and . . . submit to a judge of the court proposed findings of fact and recommendations.”<sup>4</sup> Once filed, this Report and Recommendation is disseminated to the parties in the case who then have the opportunity to file written objections.<sup>5</sup> Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”<sup>6</sup> Nevertheless, whether timely objections are made or not, the district court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.<sup>7</sup>

Following *de novo* review of the record, I am satisfied that the Report and Recommendation is sound in its legal reasoning and conclusions. Plaintiff’s Complaint should be dismissed because (1) Defendant Global Tel-Link is not a state actor for Section 1983 purposes,<sup>8</sup> and (2) Plaintiff has nevertheless failed to

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<sup>4</sup> 28 U.S.C. 636(b)(1)(B).

<sup>5</sup> 28 U.S.C. 636(b)(1).

<sup>6</sup> *Rieder v. Apfel*, 115 F.Supp.2d 496, 499 (M.D.Pa. 2000) (citing *United States v. Raddatz*, 447 U.S. 667, 676 (1980)).

<sup>7</sup> 28 U.S.C. § 636(b)(1); Local Rule 72.31.

<sup>8</sup> See, e.g., *Williams v. Securus Correctional Billing*, Civil Action No. 14-CV-42, 2014 WL 7338715, at \*5 (W.D. Pa. Dec. 22, 2014).

state a claim upon which relief can be granted.<sup>9</sup> I will, however, reject the Report insofar as it dismisses Plaintiff's Complaint with prejudice. In his "Objections," Plaintiff asks for leave to amend his Complaint.<sup>10</sup> Therefore, because *pro se* litigants are to be granted leave to file a curative amended complaint even when a plaintiff does not seek leave to amend, Plaintiff will be granted limited leave to file an Amended Complaint within twenty-one (21) days.<sup>11</sup>

**AND NOW**, therefore, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (ECF No. 37) is **ADOPTED IN PART AND REJECTED IN PART**;
2. Plaintiff's Complaint is **DISMISSED** as frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), § 1915(e)(2)(B)(ii), § 1915A(b)(1), and 42 U.S.C. § 1997e(c)(1); and
3. Plaintiff Terry McNeil is granted leave to file an Amended Complaint **within twenty one (21) days** of this Order. If no amended complaint is filed within that timeframe, the action will be summarily dismissed pursuant to Fed. R. Civ. P. 41(b).

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<sup>9</sup> See, e.g., *Almahdi v. Ashcroft*, 310 F. App'x. 519, 521 (3d Cir. 2009) ("[P]risoners 'ha[ve] no right to unlimited telephone use,' and reasonable restrictions on telephone privileges do not violate their First Amendment rights.")(quoting *Washington v. Reno*, 35 F.3d 1093, 1099-1100 (6th Cir. 1994)).

<sup>10</sup> ECF No. 43.

<sup>11</sup> *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 245-46 (3d Cir. 2008).

4. This case is remanded to Magistrate Judge Saporito to conduct judicial screening of this Amended Complaint.
5. Plaintiff's *pro se* filings (ECF Nos. 44, 45, & 49), seeking the Court to expedite a ruling on his case are denied as moot.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann  
United States District Judge